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*SPECIAL ISSUE ON ORGANIZING FOR AUSTERITY: THE NEOLIBERAL STATE, REGULATING
LABOUR AND WORKING CLASS RESISTANCE*

The Politics of Public Sector Wages Ontario's Social Dialogue for Austerity

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Abstract

The economic crisis has revealed the extent to which sustaining the key tenets of the 'Common Sense Revolution', implemented by the Conservative government of Premier Mike Harris, have eroded the fiscal capacity of Ontario. The proposal to freeze public sector wages and the ensuing consultation with public sector unions and employers in the spring/summer of 2010 signal Ontario is about to return to the rollback neoliberalism that dominated the 1990s. The difference between now and then is the more defensive posture of organized labour and the limited capacities that exist to resist such an assault.

Résumé

La crise économique a révélé l'étendue avec laquelle le maintien des principaux principes du 'Common Sense Révolution', introduits par le gouvernement conservateur du Premier Mike Harris, a érodé la capacité fiscale de l'Ontario. La proposition de geler les salaires de la fonction publique et la consultation qui s'ensuit avec les syndicats et les employeurs du secteur public au cours du printemps et de l'été de 2010 indiquent que l'Ontario est sur le point de retourner au néolibéralisme qui dominait les années 1990. La différence entre aujourd'hui et hier est la position plus défensive du mouvement syndical et les capacités limitées qui existent pour s'opposer à une telle attaque.

Keywords

austerity; consultation ; Liberal-Labour; social contract; Third Way,

Mots-clés

austérité; consultation; contrat social; libéral-travailleiste; troisième voie

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A recent issue of *The Economist* observed that industrial relations were once again back at the centre of political debate. Unlike the battles of the 1980s, this one pits public sector workers, with their superior wages, job security and pensions, against everyone else (*The Economist* 6 January 2011a). Of course, this latest criticism of public sector compensation fails to acknowledge how 30 years of falling union density and deindustrialization in the private sector has contributed to this growing gap. Ontario's 2010 Budget signalled such a confrontation was looming in that province. A seven-year program of public expenditure constraint was announced and legislation introduced freezing the incomes of 350,000 non-union and management public sector workers for two years. Moreover, the unions representing the remaining 700,000 public sector workers were invited to engage in a social dialogue process that would lead to a negotiated, and voluntary, two-year wage freeze. Comparison with the New Democratic government's Social Contract was inevitable but this was no replay of that fateful exercise.

This paper will situate the compensation restraint consultation as the opening shot in what will inevitably lead to a deepening of public sector austerity in Ontario. The origin of this current episode of fiscal crisis can be found in the Liberals' fidelity to the fiscal policies of the Common Sense Revolution. For their part, labour's political defensiveness, sectionalism, and compressed political horizons have presented the Liberals with a reluctant ally with few existing capacities for resistance. And finally, the legalization of labour relations has in this instance further demonstrated that there is no alternative to class-based mobilization and organization in building a political alternative capable of offering up serious resistance.

A Flawed Design or a Process for Charter-Proofing?

The scope of Ontario's broader public sector and the complexity of the labour relations environment is illustrated with a few statistics. As of 25 October 2010, there were 3,893 collective agreements covering 844,796 workers represented by no fewer than 79 unions. Some of the largest sectors are primary and secondary teachers (180,604 in five unions), school support workers (74,672 in nine unions), Ontario Public Service (50,893 in five unions), hospital nurses (53,264 in two unions), hospital support workers (85,507 in 16 unions), nursing homes (48,466 in 20 unions), community services (34,337 in 26 unions), and municipal (70,289 in 11 unions) (Ontario Ministry of Labour 25 October 2010). This organizational diversity is further complicated by differing internal

structures and political practices both between and within unions. Some unions have centralized decision-making structures, others less so. And politically, some unions have drifted closer toward the Ontario Liberals as a consequence of the decline of New Democratic electoral fortunes and the enduring threat posed by the populist Right Conservatives.

A Labour Relations Secretariat was created to provide “strategic analysis and advice to the government concerning Broader Public Sector (BPS) labour relations” and to co-ordinate the consultative process. The invitation to bargaining agents and employers stated the purpose of the consultations was “to provide opportunities for Broader Public Sector bargaining agents, employers and the Government to engage in a dialogue about how we can work together to manage compensation expense in a fair manner that protects key public services” (Labour Relations Secretariat).

The consultations began 9 August and concluded 3 October 2010, and were organized into three phases consisting of a number of tables. Each table was composed of representatives from several unions, sector employer associations, and government spokespeople/negotiators. A general conclusion was that the design of the consultation process was not suited to trade unions spanning sectors and sub-sectors and the diversity of decision-making traditions and structures employed. Some were highly centralized and cohesive while others were highly decentralized. Moreover, various consultation tables brought together unions and employer associations that were seen to have a “common interest” but this was rather unwieldy. These sessions were shared with other cross-sector delegations from the Service Employees International Union (SEIU) and the Canadian Autoworkers (CAW) as well more localized university faculty associations and other unions representing public service professionals such as lawyers, engineers, doctors, and policy analysts. The goal for each table was to negotiate a “framework agreement” that could be implemented locally. This was highly problematic given the number of unions representing workers in discrete sectors such as education and health. An employer-side labour law firm noted how this design would make it very difficult to arrive at a framework agreement. How employers in different sectors would be able to negotiate with unions representing workers in different sectors was an open question unless the negotiations were structured by sector, such as health, education, core public service (Kennedy 2010). The Canadian Union of Public Employee’s (CUPE’s) position, like that of the Ontario Federation of Labour, was that all unions representing workers in a sector should meet together with the employer

and government representatives. This was the structure of the process used during the Social Contract negotiations which proved very difficult for many of the employers as one veteran government-side negotiator from that time has suggested. The finance minister, Dwight Duncan, responded to CUPE's proposal saying that other unions (it has been suggested these were Ontario Public Service Employees Union (OPSEU), the Ontario Nurses' Association and the SEIU) did not agree with such an approach and that this model had been tried by the New Democratic Party (NDP) in 1993 to well known results. The sectoral-based consultative model was not generally adopted but the consultations with CUPE proceeded to break out into sector tables: hospitals, long-term care/community care, education, social services, and municipal.

CUPE's strategy in negotiations was to centre the conversation on defending public services. The Ontario Council of Hospital Unions (OCHU) tabled five demands it considered key to the agenda of defending public services. These included a five year moratorium on each of the following: 1) hospital and emergency room closures; 2) expansion of public-private partnerships; 3) reductions in the number of hospital beds and services; 4) privatization of hospital services and 5) competitive bidding in the homecare sector. As reported by other participants, the government representatives tended to be rather junior and inexperienced and "it seemed they did not want to deal. There were never any tradeoffs" as one participant said. After two weeks the government produced a draft Framework Agreement that did not include any of the key issues raised by the union. Indeed the "taboo subject" as one trade union participant called it, was the government's corporate tax reduction policy. Government representatives emphasized this was not negotiable.

There were other problems both for the government and the unions that were initially more open to engaging in a consultation. OPSEU's governing Executive Board was split at its 13 September 2010 meeting where 9 of 19 Board members voted against continuing in the consultation process. Those opposed to the participation argued for sending a message of defiance to the government, while others saw defiance as pointless. The majority (10-9) opinion was that participating in the consultations protected the union on both the legal front (any refusal to participate in the consultations could become evidence in a future court case, to the union's detriment) and on the public relations front (if the government was seeking to orchestrate a public fight with unions to shore up its support on the right). OPSEU President Smokey Thomas's presentation to the government keyed in on the corporate tax cuts. Despite the division on

consultation tactics, the Executive Board voted unanimously to support the union's campaign efforts to oppose the wage freeze. That led to an extensive mobilization in the period of November 2010 to January 2011, with OPSEU mobilizers making more than 250 presentations to locals and holding more than 40 demonstrations. This campaign explicitly linked the wage freeze to corporate tax cuts. The campaign subsequently morphed into "People for Corporate Tax Cuts," an online campaign supported by advertising in key Liberal-held ridings around the province. Extensive consultations with eight other unions had failed to arrive at an agreement on a cross-union campaign.

The opposition to the process within OPSEU further held that the union's top leadership was interested in pursuing sector agreements with the government and that participation would lend the process legitimacy. "The strategy", as an OPSEU activist characterized it, "was to publicly oppose the wage freeze but privately to go back to the table and construct an agreement by sector". Therefore, the "opposition" in OPSEU, refused to support breaking out into sector tables as CUPE had done. Some were of the view that the only table where there appeared to be an employer mandate to actually negotiate was that of the Ontario Public Service. The SEIU agreed to participate in the process in "good faith" on the condition that a strategic discussion on home care issues be included in the negotiation. This would include such issues as the future of competitive contracting, successor rights, compensation for travel time and mileage, and for standardization and increases in pay rates for home care workers. A "Framework for Continued Discussions" was eventually arrived at but no further substantive discussions ensued.

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And here is the zero sum of the government's strategy: that protecting public services was contingent upon an effective wage cut for public sector workers. This was not an acceptable first principle for many, if not all, of the unions given the commitment to continue with reducing corporate taxes. Had the government been open to entertaining a range of truly negotiable outcomes perhaps this would have been a viable first principle. At the same time, the unions and even more critical elements within the unions, did not pursue a campaign of resistance that would reach deeper within the unions themselves and beyond to other allies, both real and potential. As in the case of OPSEU, the split is based on internal leadership politics rather than substantive ideological differences. One activist's observation was that the question of "collaboration with the Liberals is a wedge issue" for the faction opposed to president Smokey Thomas. This is far from the more overtly class politics pursued by David

Rapaport's 2007 campaign for union president. Nonetheless, these consultations took place within a political and historical context where the governing Liberals, no longer enabled through an expanding economy, found their project running up against the enduring constraints established in the first years of the Harris government.

Ontario's Third Way: In the Long Shadow of the Common Sense Revolution

Canada's provinces have responsibility for delivery of core welfare state public services most notably health, education, social assistance and a myriad of social services that taken together compose the heart of Ontario's redistributive social policies. The financing of these services requires more than 70 percent of total provincial expenditures. Consequently, fiscal policy is particularly reflective of the distribution of class and sectional power in the provincial state. The 2003 election of the decidedly "social investment state" (Perkins, Nelms, and Smyth 2004) Liberals, was greeted as a departure from neoliberalism. It certainly was a departure from the open class warfare of the Harrisite Common Sense Revolution, but any suggestion that the arrival of the Liberals marked a rupture from neoliberalism is entirely based on a few redistributive measures, modest reinvestment in public services, and certain labor law reforms that improved, but did not fully roll back the Harris governments "reform" of labour policy (Bartkiw 2010).

The Liberals differentiated themselves from the Conservatives by contrasting their proposals to reinvest in public services and restore social peace. However, fiscal conservatism and balanced budget orthodoxy would remain intact. The Liberal platform committed to "keeping taxes down" as "Ontario workers and their families already pay enough" (Ontario Liberal Party 2003. Book #3, 5) and maintain balanced budgets. The Conservative plan to further cut corporate taxes was firmly rejected. In contrast, the Liberals argued "corporate taxes are already competitive" and that proceeding with tax cuts that would bring Ontario's corporate income tax 25 percent below that of its American Great Lakes states competitors would "compromise our ability to make investments that increase our productivity" (5). At the same time the Liberals drew a sharp contrast between their approach of establishing Ontario's competitive advantage through investments in support of skills and knowledge acquisition as opposed to the policies of the Harris-Eves governments' "race to the bottom" policy of tax cuts (7). Each party presented different visions of the neoliberal project. For the Liberals the provincial state had a strategic role in enabling a 'high road' progressive competitiveness policy through

policies serving to enhance human capital formation (skills training, post-secondary education) and sector specific investments in research and development and providing incentives for investment in strategic areas (Albo 1994).

From their first days in government the Ontario Liberals expressed a willingness to frame reinvestment in public services together with calls for public sector workers and their unions to restrain demands at the bargaining table. In other words, the maxim that there is a trade-off between protecting and expanding public services and the wages and salaries paid to public sector workers, was established early on in the Liberals first term with the prospect of “McGuinty Days” (Livingstone 2004). And the premier wrote in a press statement that “We’ve got to do more than just increase wages” (Urquhart 2004, F2). One cabinet minister noted that expenditures for compensation accounted for 75 percent of the money the province transferred to the broader public sector (Brennan and Benzie 2004, A1). There was no escaping the wage question. Rather than rolling back the personal and corporate tax cuts to address the \$5.6 billion deficit the Liberals inherited from the Conservative government, the first Liberal budget would signal a continuation of the Common Sense Revolution’s policy of public sector austerity.

The first Liberal budget focused on the tattered state of Ontario’s public services. The “One Ontario” rhetoric of the campaign was re-engaged with the finance minister stating there would be no further “irresponsible tax cuts” that benefited a few and undermined the capacity “to provide public services for all” (Ontario Budget 2004 Speech, 1). Reinvestments key areas of only modestly reflatd the public economy. The Canadian Centre for Policy Alternatives (CCPA) concluded that the program and capital spending planned for 2002-3 composed 11.9 percent of Ontario’s GDP. The Liberals’ 2004 budget expanded this to 12.5 percent of GDP (Ontario Alternative Budget 2004, 5-6). The Liberal promise to rebuild public services was predicated on balancing the budget and freezing taxes by flat-lining or cutting the budgets of non-priority programs. Ontario’s public sector unions were enraged. A spokesperson for the Ontario Public Service Employees Union (OPSEU) said of the budget: “The first Liberal term in office is looking a lot like what a third Tory term in office would look like”. The Conservative government’s corporate income tax cuts, which the Liberals in opposition and through the election had so roundly criticized, were left in place. And Ontario’s most vulnerable, the social assistance recipients who had their benefits cut by more than 21 percent in 1995 and frozen from that point forward, were

effectively left with a 35 percent rate cut based on the 1993 rate levels (CCPA 2004, 3). In this context, the Liberal 2003 win can be understood as a defeat of an openly class warfare style of neoliberalism but did not mark the defeat of neoliberalism itself. The continuity in a fiscal policy of tax cuts is the unquestionable source of Ontario's chronic revenue shortfall (CCPA 2007, 7).

Ontario's Exit Strategy: Consolidating Austerity

The 2010 budget delivered on March 25 was an expression that the cost of the Great Recession would not be equally shared. Just as evidence was mounting for the corporate sector's return to profitability, the cost of the crisis was shifted onto the public sector. The "we're all in it together" rhetoric and style that has been the Ontario Liberal trademark has arrived at an impasse. The 2010 budget forecasted 7 years of austerity extending to 2017-18. This can only be achieved through a dramatic shrinking of Ontario's public sector from a current 19.2 percent of GDP to 15.5 percent in 2017-18. This translates to a 20 percent contraction of Ontario's public sector, consolidating it at a size that corresponds to that which existed at the height of the Common Sense Revolution (TD Economics 25 March 2010, 1). Moreover a massive privatization of public assets including the liquor control board, the Ontario Lottery and Gaming Commission, public electricity producers and distributors was suggested but, at least for the moment, not acted upon (Evans and Albo 2010, 2).

The 2010 budget is most noteworthy for singling out the compensation paid to public sector workers as the most serious component of the fiscal crisis. The *Public Sector Compensation Restraint to Protect Public Services Act*, in one motion, made three points for the government. By freezing the incomes of non-union public sector workers and political staff, they picked the 'low hanging fruit' or in other words, the easiest group to regulate. Second, from a pure retail politics perspective, the action suggested the government was prepared to be tough with public sector workers. And third, the government sidestepped a confrontation with the public sector unions, a group it had been building political capital with since the 1999 election.

The argument for a wage freeze, followed by a protracted period of restraint, was situated within the global economic crisis. The government contended that reinvestment in public services and expansion of public sector employment was enabled by strong revenue growth. The economic crisis, however, "opened a significant fiscal gap" causing revenues to decline and expenditures to rise as stimulus spending rolled out

(Government of Ontario July 2010). The government position was based on three general points. The first cited inflation within the public sector. From 2003-2010, the Ontario government's program expenditures grew at an average annual rate of 6.6 percent and this was in part driven by wage settlements averaging 3 percent per year. This was compared to private sector wage settlements of 2.1 percent. The accumulated wage growth for the public sector for the period 2004-09 was 18.8 percent compared to 13.7 percent for the private sector. Furthermore, the government argued, the annual average rate of growth for public sector workers has accelerated significantly, from 1.9 percent in 1991-95 to 2.9 percent in 2004-09. Public sector wage increases and investments in public services were enabled by strong revenue growth that averaged 8.7 percent between 2003-04 and 2007-08. Second, the accumulated cost on interest in public debt was cited as a serious problem serving to crowd out the capacity to spend on public services. Allowing the annual deficit to continue unaddressed would only expand the accumulated debt and thus the cost of borrowing to service the interest and principal of that debt. The finance ministry projected that interest on this accumulated debt would grow at an annual rate of 12 percent between 2009-10 and 2012-13. This translates into an annual increase in interest charges of \$3.6 billion. By 2012-13, Ontario will be paying \$12.5 billion in annual interest payments. And third, with a fiscal plan to balance the budget by 2017-18, program expenditure growth can be no more than an average 1.7 percent annually until 2013 and no more than 1.9 percent after that. Given that the factors feeding into program expenses are many with compensation being only one factor, there is very little room to accommodate anything more than the most modest of wage increases. Indeed, the government noted that future spending will be very tight. The budget plans for no more than 1.9 percent in program expenditure growth. Subtracting 1.2 percent from this to simply meet the growing demand for public services due to population growth, left a mere 0.7 percent/year to finance any additional costs including wages. And the core principle, for the government, was that tax rates must remain competitive to attract investment (Ministry of Finance FAQ 2010, 1; Government of Ontario July 2010). Budgets reveal political choices. Where Manitoba halted further cuts in the corporate income tax rate, Ontario unflinchingly proceeded. Ontario's ongoing plan to cut corporate taxes, from 14 to 10 percent, once fully implanted, will result in the loss of \$4.5 billion in revenue (Ministry of Finance 2010a, vii). The aggregate revenue loss as a consequence of combined personal, corporate and other tax cuts totals \$18 billion (Mackenzie 2010, 8).

Business economists and consultants have contended that the disparity between public and private sector compensation requires redress. Consulting firm KPMG presented a strategy to use the current fiscal crisis as a stage to comprehensively re-write the public sector employment contract across the globe. The report's main finding is that public sector managers are not sufficiently prepared to undertake the restructuring KPMG sees as necessary. It notes that "a major component of public sector costs are wages...the public sector could cut back on human resources" a point to which a KPMG executive is cited as saying "it makes sense not to do something yourself that somebody else can do for a third of the cost" (KPMG International 2009, 15). Not surprisingly, a significant turn to public-private partnerships and outsourcing is recommended. A TD Economics Report largely echoed these same themes noting that while the current crisis in public finances would likely not be as bad as that of the early 1990s, the exit would take longer require fiscal discipline and a restructuring of public services delivery (TD Economics, 2009). Similarly, a joint study by KPMG and a University of Toronto policy centre noted the gap in compensation between public and private workers. The response to this, the report recommends, is to lower the cost of wages and benefits in the public sector "because it furthers equity objectives" (Mowat Centre, School of Public Policy and Governance, KPMG 2010, 22). Confronting the cost of public sector labour is key to restructuring the cost of public services (15). Pensions provide a perfect fault-line to divide public and private sector workers. Given that 78 percent of Ontario's public sector workers participate in a defined pension plan, in contrast to 25 percent of private sector workers, one can see why the pensions issue presents a political opportunity to the ruling class and their governmental allies to frame this as an 'equity' issue. A recent survey of Canadian deputy ministers suggested a protracted recession would magnify the "growing gap between traditional protections of the public service (job security, defined benefit pensions) and the insecurity of the private sector" (IPAC 2009, 6).

The Compensation Restraint Consultations: Protecting Public Services or Electoral Strategy?

The unions representing public sector unions were divided internally, and between one another over strategy and whether or how to engage in the consultation process. The CAW left the process on the first day but not before stating they were attending only to gather information and not to bargain. Other unions, or sub-sectors within unions, saw this as an

opportunity to push beyond austerity and present alternatives that challenged government fiscal policy and the lack of democracy in public sector workplaces – the point where public services come face to face with citizen-users. For finance minister Dwight Duncan the objective was a two-year wage freeze that would both protect public services and stimulate economic growth. Duncan set the context as one where tax revenues had dropped 12.2 percent and real GDP declined by 4.7 percent. Yet growth in demand for public services means that expenditures will continue to increase by 4.4 percent in health and 3.7 percent in education. Accommodating this growth within the constraints of the fiscal plan means there is no capacity to increase allocations for compensation. Citing other jurisdictions such as California and New York where public services have been slashed and state workers' pay cut, Duncan explained that Ontario had chosen a different path. But with 55 percent of all public program expenditures directed to compensation, there was no evading the wage relationship (Duncan 20 July 2010). Of course, other revenue options were not for consideration.

Given the economic and fiscal context, one would think that this was a serious effort. Yet one union participant likened the process to the 1993 film *Ground Hog Day* where the key characters are caught in a time loop as events repeat themselves day after day. Participants reported there appeared to be no real mandate or desire to negotiate an agreement. Three hypotheses explain this. First, the design of the consultative process was not suited to the complexity and diversity of representation in Ontario's public sector. Second, it was fundamentally a political tactic designed with Ontario's October 2011 election in mind and sought to simultaneously consolidate the stable and warm relationship with a labour movement that feared the Tories more and assuage fiscally conservative opinion. And third, the entire process was a prelude to legislative intervention and followed the direction established by an earlier Supreme Court of Canada decision that ruled as unconstitutional a government of British Columbia legislative intervention in a health care strike. And, not insignificantly, a fourth goal might be added which is the process focused attention on the wages paid to workers rather than on corporate tax cuts. And so both public opinion and union expectations could be managed.

Taken in total, the process lacked rigour. The constraint proposal was designed at the highest levels of the Ontario state, specifically within the Premier's Office by David Jean, deputy chief of operations and a key political strategist, together with the finance ministry. That it so rapidly wobbled without attracting much senior ranking attention would suggest

that a decision to allow the process to meander to a conclusion was made early on. The obvious explanation is that the most senior ranks of the public service were not concerned with achieving a negotiated outcome. Rather the goal appears to have been to check “did consultation” off the Charter-proofing checklist.

The Liberal-Labour Alliance: The Longer Shadow of the Social Contract

The experience of an NDP government was mixed for Ontario’s trade unions but ultimately the Social Contract Act forced approximately half of the trade unions in Ontario to withhold support for the NDP. The result held far-reaching consequences. As journalist Thomas Walkom wrote: “In 1990, the New Democrats were the only serious political force remaining on the left wing of Canada’s political landscape. When they abandoned that terrain they did not just leave it empty. They sowed the ground with salt” (Walkom 1994, 269). The result has been that since the late 1990s, given the rupture with the NDP and that party’s dramatically reduced electoral fortunes, various unions have drifted toward a political entente with the Liberals marking the revival of a modernized Gompersism (Evans and Albo 2007, 6). But the emergence of a twenty-first century Liberal-Labour alliance is much more than a return to pragmatic business unionism. Rather it is an important symptom of an ideological divide expressing the trade union’s adaptation to the conditions of neoliberalism in turning to defensive tactics and strategies.

An explicit example of this was the formation of the Working Families Coalition (WFC) in the run up to the 2003 election. Composed of the CAW, two teachers’ unions, International Brotherhood of Electrical Workers (IBEW), and the building trades, the electoral strategy of the WFC “was to actively campaign against the governing Tories, and, in the process, implicitly encourage support for the Liberal Party” (Walchuk 2010, 38). The unions did not affiliate to the party but provided both direct financial support and conducted a “third party” campaign. This has been identified as the emergence of “middle class unionism” where such unions tend to be industry or profession specific with no interest in organizing outside of that sector and are prepared to strike alliances with the Liberals over investment in their specific sector (43). The Liberals have made health, education and infrastructure investment the centrepiece of their policy agenda and thus forms the material basis for a progressive competitiveness alliance with specific sectors.

This partial but substantive political realignment offers at least partly explains why the Liberals did not pursue a more aggressive

approach, including rollback legislation. One union participant characterized the entire process as being about polling and triangulation:

They look tough but actually don't do anything. This is not about money but politics. The triangulation is that the Liberals can say we are not the NDP and we're not the Common Sense Revolution, We're the Third Way. The Fall Statement covered their Left flank. Everyone does not want this to be a replay of 1995 leading to another Mike Harris.

While the Liberals had cultivated allies within several of the key public sector unions, most notably the education unions and the Ontario Nurses Association, any intervention in bargaining would swiftly chill those relationships. They further understood their fidelity to fiscal conservatism would be a source of tension with the public sector unions but avoiding the wage question will be impossible.

Since 2002, the majority of Ontario trade union members work in the public sector and by 2010 accounted for 57.9 percent of all union members in the province (Statistics Canada CANSIM Table 282-0077). This shift reflects the declining union density rate in the province's private sector. In 2009, a mere 15 percent of private sector workers were unionized compared to 70.5 percent of public sector workers (CLC 2010). This shift in the centre of gravity of the trade unions has significant political implications and sets the Liberals, or whoever wins the October 2011 election, on a collision course with the public sector unions. This last bastion of trade union strength, the very sector the "Third Way" Liberals have given a strategic role to in advancing their progressive competitiveness agenda, must at some point become the site of a serious contestation between the unions and forces seeking to broaden neoliberal restructuring through the Ontario public sector. Oddly, much as social democracy everywhere began to falter when it turned to public sector austerity and neoliberal restructuring, undermining its effective *raison d'être* in the trade unions and welfare state, the Ontario Liberals are now travelling toward a similar denouement.

Public opinion gives the triangulation hypothesis some greater traction. A number of unions collectively hired market research firm *Vision Critical* to survey the attitudes of Ontario citizens toward a range of political and austerity policy issues. The results revealed a variety of contradictory views but also signaled to the unions that public opinion was far from sympathetic. The overall assessment of the McGuinty government was not encouraging. Seventy-three percent of respondents indicated they

were very or somewhat dissatisfied with the McGuinty Liberals. The same number viewed the McGuinty government as moving in the wrong direction. A significant public sector/private sector divide respecting the performance of the government was revealed where 43 percent of public sector workers were broadly satisfied with the government compared to only 23 percent of private sector-employed respondents. In other words, three-quarters of private sector respondents were less than favourable toward the government. And with respect to the recession and Ontario's fiscal crisis, 73 percent supported the proposal that the public sector unions had a responsibility to assist with the economic recovery. The same number expressed support for a two-year public sector wage freeze. However, this is not to say Ontarians are a monolithically conservative bloc. The reality is somewhat more nuanced. For example, while 22 percent of respondents favoured a reduction in government spending, a comparable 21 percent preferred an increase in program spending. Forty-seven percent were inclined to neither increase nor cut public spending but rather maintain the current levels of expenditure. And in terms of support for various measures to tackle the deficit, a rather egalitarian preference was expressed with 79 percent supporting increasing taxes on the banks and financial industry and in favour of increasing corporate taxes. And 77 percent supported a 10 percent high-income surtax on those earning \$300,000/annum (Vision Critical 2010).

The electoral calculation cannot be diminished. The Liberals could not accede to stop, let alone roll back, the corporate tax cuts or pursue a tax on high income earners, and thus risk alienating a key part of their political base and nor could they move to legislate and set in motion a confrontation with the public sector unions. The teachers' unions, and the Ontario Secondary School Teachers' Federation in particular, had threatened to actively oppose the Liberals if there was any attempt to legislate a freeze. And with eyes on succeeding McGuinty as party leader, Dwight Duncan no doubt saw an opportunity to consolidate labour support for his leadership bid by not energetically pushing the process forward.

Lesson from the Constitutionalization of Politics: Real Protection is Class Mobilization

It has been suggested that the intent of the Ontario government's consultation was to provide a forum for limited dialogue before moving to legislatively intervene and apply the *Public Sector Compensation Restraint to Protect Public Services Act* to the unionized public sector workforce. This understanding derives from a 2007 Supreme Court of Canada decision

(Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia, 2007 SCC 27) that found sections of British Columbia's *Health and Social Services Delivery Improvement Act*, 2002 (Bill 29) to have violated the Charter's guarantee of freedom of association. The decision thus extended a limited constitutional protection to collective bargaining. The decision appeared to pierce Panitch and Swartz's permanent exceptionalism thesis that legislative interventions into collective bargaining had become a fixture in Canadian labour relations (2003). This is not the case as this decision heralds less an end to unabashed state intervention seeking to roll-back gains made through collective bargaining and more of a limit on how the state may proceed to do so.

Bill 29 allowed for extensive privatization, elimination of services, enabled hospital closures with as little as 2 months' notice, and stripped out protection from contracting out and for successor rights, bumping, and retraining and job placement (Camfield 2006, 14). British Columbia's thoroughly neoliberal Liberal government defended their draconian intervention on the grounds it was necessary to address a "crisis of sustainability in the provincial health care system" (Etherington 2009, 723). The Health Employees' Union and the British Columbia Federation of Labour responded both politically and legally to this attack. The legal challenges also failed at the B.C. Supreme Court and the B.C. Court of Appeal. However, the ultimate Supreme Court of Canada decision provided an important but limited victory that "effectively prohibits 'substantial interference' in free collective bargaining without 'good faith' negotiation and consultation" (CAW 2010). The decision requires "both employer and employees to meet and to bargain in good faith, in the pursuit of a common goal of peaceful and proactive accommodation" (B.C. Health Services, 2 S.C.R., 90). In this sense, the protection is limited to a process of consultation and not a substantive outcome such as preserving existing protections and benefits (Etherington 2009, 715; Norman 2008, 19). As such, the SCC's decision "simply shields public sector unions from the worst excesses of neoliberalism" (Savage 2009, 16). Therefore, this does not strictly prevent a government from intervening legislatively to undermine collective agreements (Tucker 2008, 158). In other words, nothing in this decision stops the rolling back of existing collective agreements providing this takes place "at the conclusion of a process of consultation with the union" (Savage 2009, 15). The question then is what will the Supreme Court decide the next time a government raises the spectre of fiscal crisis as it moves to undermine existing collective agreements? The answer will depend "on the extent to which future courts

take an unduly narrow reading of the decision as simply imposing a mere consultation requirement on government's before over-riding collective bargaining rights" (Savage 2009, 16).

By the end of 2010 in Ontario, with the constraint consultations concluded, there were no agreements save with the Ontario Provincial Police and government lawyers, and these settlements hardly conformed to the zero/zero objectives the government sought. The Rae NDP government moved to legislate when it was clear that a freely negotiated social contract was not to be. Not so in Ontario today. Was this meaningful consultation that would satisfy the Supreme Court of Canada's decision? In all likelihood, if there is to be legislation, it will not be introduced until after the October 2011 election regardless of who wins. But, parsing the finance minister's "thank you" to participants, a number of messages are conveyed revealing how the government understands the process. In his letter, Duncan states "all parties ... now have a better understanding of each other's expectations and of the current fiscal challenge" and further "we cannot ignore the simple fact that 55 percent ... of all government program expenses go to compensation ... we can only manage the deficit by also addressing the single biggest line item in our budget – public sector compensation". And, finally, "we expect all parties to continue recognizing the fiscal situation facing the province and to continue to seek ways to comply with the Policy Statement" (Ministry of Finance 2 November 2010). The messaging is clear: we better understand the fiscal problem; public sector compensation cannot be ignored; and all parties will continue to consider the zero/zero objective.

Conclusion: Beyond Sectionalism and Toward Resistance

The Liberal government has framed constraining public sector compensation as central to Ontario's exit strategy from the fiscal crisis. The failure of the consultation process to arrive at widespread framework agreements across the public sector is not even the point. The Supreme Court's decision respecting British Columbia health care workers offers only limited guarantees respecting consultation and this has been arguably achieved. What is in play is pure electoral strategy on the part of both the Liberal party and the unions. The Liberals cannot afford to alienate their support, uneven and variable in depth as it may be, among the public sector unions given recent polls show them trailing the Conservatives by 10 or more points. Given this electoral calculus, the unions fear a return to the Common Sense Revolution. John Wilkinson, a minister in McGuinty's cabinet, suggested early in the process that Ontario's public sector unions

would co-operate with the government on the wage freeze. That clearly has not happened, at least not explicitly so. But it cannot be denied there was hardly a trade union common front on this matter. As several participants to the process commented there was very little co-ordination or political strategizing among the unions. Instead, sectionalism prevailed as a result of political, ideological and bargaining territory differences (Gindin and Hurley 2010). But the result of the now deeply embedded defensiveness of the trade unions is an ongoing inability to raise larger questions that are less sectional in nature and significantly more political. Doing so would force onto the agenda the need to democratize the state, and how it delivers public services, and the economy as a whole (Gindin Leftstream video 2010).

While defending wages will clearly remain an issue, it has been proposed that the strategic issue for public sector unions will involve reframing the debate around, and leading in the struggle for, the improvement and democratization of public services (Gindin and Hurley 2010). Indeed, CUPE's hospital sector, while not surrendering to demands that compensation be off the table, advanced this very argument. The unions proposed their own alternative fiscal strategy including proposals to cancel the corporate income tax reductions, a financial transactions tax, and the establishment of a new top personal income tax threshold that would raise an estimated \$2 billion in new revenue alone (McCarthy, Sanger, Stanford and Weir 2010, 23-26). In October 2010, OPSEU launched a membership mobilization campaign: "Invest in Ontario – Stop the Corporate Tax Cuts", that urges members to lobby Members of the Provincial Parliament (MPPs) to reconsider corporate tax cuts at the expense of public services. The Liberals however, have been unwavering in their public position, as expressed in the finance minister's "thank you" memo that states compensation remains at the centre of this discussion. Given this uncompromising line, the public sector unions can rely on nothing less than a class-based mobilization around their alternative proposals to protect public services and those who produce them. The campaigns run by certain unions have been directed toward members only. While at the time of the 2010 budget, a number of unions did begin a process of cooperation but this rapidly faded. Indeed, one activist said efforts to launch a multi-union campaign against the corporate tax cuts in the autumn of 2010 gained no traction. Part of OPSEUs campaign seeks to popularize the anti-corporate tax cut sentiment reflected in public opinion polling but this, while creative and commendable, will be limited by the constraints of a one-union campaign. Something akin to the *Coalition of*

Resistance Against Cuts and Privatisation in Britain that brings together a broad alliance of social forces to oppose this next phase in the neoliberalism is a political necessity. Given the succeeding waves of restructuring that have swept through the private sector over the past quarter century, and consequently the lives of private sector workers, it will be imperative that a movement to defend public services and public sector workers not simply be a defense of the status quo. Private sector workers, union and non-union are key to political success and therefore the yet to be founded 'coalition of resistance' must be as effective and creative as the populist Right has been in speaking to the anxieties of workers in all sectors. The emerging issues are centred on public sector productivity (code for rationing, flexibilization and work intensification) and parity with the wages and working conditions found in the non-union private sector. The National Union of Public and Government Employees' (NUPGE) campaign "For Public Services and Tax Fairness" is a national effort to counter the view that there is a structural fiscal crisis. While it too is isolated and has not received a great deal of publicity, the fiscal crisis affects all provinces and any mobilization of resistance will need to be constructed nationally. Anything less than such a broad-based resistance mobilized around an explicitly anti-neoliberal program, will result in a version of the Irish Croke Park deal where the dominant faction of Ireland's trade union movement, more comfortable as a very junior partner in the management of Irish capitalism than as a force of resistance, agreed to a policy agenda that destroys working class lives.

A Note on Methodology

Several participants to the consultation process provided much of the information, data and interpretation presented here. Protecting the anonymity of these individuals is essential and therefore neither their names nor affiliations can be disclosed.

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